United Nations S/2010/579

Security Council

Distr.: General
11 November 2010

Original: English

Report of the Secretary-General on the protection of civilians in armed conflict

I. Introduction

1. The present eighth report on the protection of civilians in armed conflict is submitted pursuant to Security Council resolution 1894 (2009).

2. The adoption of resolution 1894 (2009) on 11 November 2009 was a fitting commemoration of 10 years of thematic action by the Security Council on the protection of civilians and a welcome manifestation of the ongoing commitment of the Council to that critical issue. The resolution marked a significant step towards responding to some of the five core challenges identified in my previous report of 29 May 2009 (S/2009/277), namely, the need to enhance compliance by parties to conflict with international law, enhance compliance by non-State armed groups, enhance protection by United Nations peacekeeping and other relevant missions, enhance humanitarian access and enhance accountability for violations.

3. The present report provides an update on progress made in responding to those core challenges. It takes stock of positive developments and ongoing or new concerns affecting civilians in today's conflicts and makes additional recommendations for responding to the core challenges. In doing so, the report emphasizes the fundamental need to focus efforts on making a tangible difference where and for whom it matters most: in the midst of conflict and for the hundreds of thousands of civilians — women, men and children — confronting the horrors, pain and suffering of war on a daily basis. Whether as the intended targets of attack or the incidental victims of the use of force, civilians continue to account for the majority of casualties in conflict. The unstinting and rigorous attention of the Security Council to their situation remains vital and must be at the centre of its deliberations and actions. This is particularly the case in the many protracted violent crises and conflicts that persistently pose unacceptable levels of risk to civilians, with little prospect of peaceful resolution in the near future.

4. Through its thematic resolutions on the protection of civilians, including, most recently, resolution 1894 (2009), as well as resolutions relating to children and armed conflict and to women and peace and security; the mandating of peacekeeping missions to protect civilians; the adoption of the aide-memoire on the protection of civilians (see S/PRST/2009/1); and the creation of the informal Expert Group on the Protection of Civilians, the Security Council has over the course of the past 11 years established a comprehensive framework through which to pursue more

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effective protection on the ground. While this framework may be further developed, the emphasis must now be on making progress in enhancing protection on the ground.

5. For the Security Council, that means the systematic application of the aide-memoire and the regular use of the Expert Group to inform the development and revision of peacekeeping and other mission mandates, as well as other forms of Security Council action on protection. It means monitoring progress in providing protection to civilians and ensuring the implementation of the Council's resolutions. For United Nations country teams and peacekeeping and other relevant missions, it means more effective coordination, strategy setting and prioritizing; regular monitoring of the protection of civilians; and candid reporting to relevant bodies, including the Council, on obstacles to and opportunities for progress. For all involved — parties to conflict, the Security Council, Member States and the United Nations more broadly — it means redoubling efforts to meet the five core challenges and enhance respect for the principles of international humanitarian law, human rights law and refugee law on which the protection of civilians is founded.

II. The state of the protection of civilians

6. To the extent that progress can be reported in the protection of civilians in the 18 months since my previous report, it is not on account of parties to conflict having scrupulously observed their obligations under international law. On the contrary, such progress rests with developments at the normative level and, above all, with the efforts of United Nations actors, in particular humanitarian agencies and peacekeeping missions, and other international and non-governmental organizations to enhance protection, as well as with the courage and ingenuity of the affected populations.

A. Ongoing and emerging concerns

7. A significant factor in the failure of armed parties to conflict to observe international law is the continued prevalence of non-international armed conflicts, often marked by the proliferation and fragmentation of non-State armed groups. This has contributed to the asymmetric nature of conflict in places such as Afghanistan, the Democratic Republic of the Congo, Pakistan, Somalia, the Sudan and Yemen.

8. The consequences for civilians have been devastating, as armed groups have often sought to overcome their military inferiority by employing strategies that flagrantly violate international law. These range from deliberate attacks against civilians, including sexual violence, to attacks on civilian objects such as schools, to abduction, forced recruitment and using civilians to shield military objectives. The risks for civilians are further increased as militarily superior parties, in fighting an enemy that is often difficult to identify, respond with means and methods of warfare that may violate the principles of distinction and proportionality, giving rise to further civilian casualties.

9. In Afghanistan, for example, the United Nations Assistance Mission in Afghanistan (UNAMA) reports that in 2009 almost 6,000 civilians were killed or

injured as a result of hostilities. During the first half of this year, UNAMA documented more than 3,200 civilian deaths and injuries. Some 75 per cent of these deaths and injuries were attributed to anti-Government elements, which have increasingly used more powerful and sophisticated improvised explosive devices. Civilian casualties attributed to pro-Government forces declined by 30 per cent compared with the first half of 2009. Of particular note is the 64 per cent decrease in casualties resulting from air strikes, following the issuance by the International Security Assistance Force (ISAF) in July 2009 of a tactical directive on such attacks. Nonetheless, air strikes continue to account for the highest proportion of civilian casualties attributable to pro-Government forces.

10. In the Democratic Republic of the Congo, armed groups continue to attack civilians in the Kivus, including by committing appalling acts of sexual violence, as well as in Equateur Province and Orientale Province, where attacks by the Lord's Resistance Army (LRA) have increased in remote areas. Reports also continue of violations committed by the Forces armées de la République démocratique du Congo (FARDC), including rape and looting.

11. In Somalia, Médecins Sans Frontières (MSF) reports that, during the first seven months of 2010, of 2,854 patients treated by MSF-sponsored medical teams at its hospital in Mogadishu, 48 per cent had suffered "war-related injuries". Sixty-four per cent of those patients had sustained serious blast injuries, consistent with continual intensive mortar fire in residential areas. Thirty-eight per cent of those with war-related injuries were women or children under 14 years of age. The register of the surgical programme at the hospital, which began its operations in September 2007, shows that 50 per cent of the 11,888 patients treated there had suffered "war-related injuries".

12. In Darfur, civilians continue to be attacked by all parties to the conflict, and intertribal clashes have claimed a large number of civilian casualties. According to the African Union-United Nations Hybrid Operation in Darfur (UNAMID), more than 900 civilians have been killed so far this year. Meanwhile, the United Nations Mission in the Sudan (UNMIS) continues to receive reports of serious violations carried out by the Sudan People's Liberation Army during military operations and civilian disarmament campaigns, as well as reports of LRA attacks against villages on the southern border.

13. Displacement within and across borders remains a defining characteristic of conflict, as civilians flee violence or are forced from their homes, often in violation of international law. At the end of 2009, more than 27 million people remained internally displaced by conflict, including 11.6 million in sub-Saharan Africa, while the world's refugee population stood at more than 15 million. Alarmingly, the number of newly displaced continues to outnumber returns, and durable solutions are woefully absent for millions of internally displaced persons and refugees in situations of protracted displacement.

14. As highlighted in my previous two reports, housing, land and property issues feature prominently in contemporary conflicts. Disputes over land and resources continue to be both drivers and consequences of conflict. There is increasing recognition of the need to address these issues, particularly in relation to the return of internally displaced persons and refugees and the restitution of their housing, land and other property, including by paying attention to the difficulties faced by women in such situations. Restitution is only one possible component of the

response, however. Many refugees and internally displaced persons may have had irregular tenancy rights prior to displacement, may be occupying land that belongs to or is legally occupied by others, or may be competing with others who also have claims to land and property under customary or statutory legal frameworks. Returning to the situation prior to displacement may not be possible or desirable, and alternative solutions to restitution must be found.

15. Women and children continue to suffer extreme violence and hardship during conflict. Sexual violence, including rape, remains tragically prominent among the atrocities to which women and girls in particular, but also boys and men, are subjected. The mass rapes in Kibua in the eastern Democratic Republic of the Congo over four days in July and August 2010 illustrate catastrophic failures both in prevention and response, which must be addressed. As well as being subject to sexual violence, children continue to be killed and maimed in conflict, and many become orphans. They are frequently forced to take up arms or act as spies, or are used as suicide bombers and human shields by armed forces or groups. They are often disproportionately affected by displacement, and deprived of education, health care and access to justice.

16. Attacks against journalists in conflict situations remain of concern. During 2009 and 2010, journalists were reportedly killed in Afghanistan, Colombia, the Democratic Republic of the Congo, Iraq, Israel, Lebanon, Pakistan, the occupied Palestinian territories, Somalia, Sri Lanka and Yemen. I would remind the Security Council of the pressing need, as expressed in resolution 1738 (2006), for States and other parties to conflict to prevent attacks against journalists and prosecute those responsible. I would also encourage the Human Rights Council to consider positively the recommendation of the former and current Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression to study the issue and develop proposals for strengthened protection.

17. The increased use of unmanned aerial vehicles, or drones, such as in Afghanistan and Pakistan, has received significant attention since my previous report. A significant number of States now possess such technology, and some have already developed weapons systems, many of them involving explosive weapons, in which weapons can be fired from such vehicles by remote control. This development in the way in which wars are fought presents a number of concerns regarding compliance with international law. Although there is nothing inherently illegal about the use of drones in armed conflict, it is unclear whether all the persons targeted by drones were combatants or were directly participating in hostilities, thus raising questions about compliance with the principle of distinction. Drone attacks are also reported to have caused hundreds of civilian casualties, raising questions about compliance with the principle of proportionality. Finally, accountability for failure to comply with international law is difficult to ensure when drone attacks are conducted outside the military chain of command and beyond transparent mechanisms of civilian or military control. This is an area that will continue to be carefully monitored.

18. As recognized by the Security Council in resolution 1894 (2009), the excessive accumulation and destabilizing effect of small arms and light weapons pose a considerable impediment to the provision of humanitarian assistance and can exacerbate and prolong conflicts, endanger civilians and undermine the security and confidence required for peace and stability. The Council has imposed arms

embargoes in a number of situations, including the Democratic Republic of the Congo, Somalia and the Sudan, as well as created mechanisms to monitor implementation. Nonetheless, illicit trafficking continues into these and other countries. At the Fourth Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (see A/CONF.192/BMS/2010/3), which took place in June 2010, a variety of measures to help prevent the illicit trade in weapons was elaborated. I would urge Member States to implement those measures without delay. Of course, it is not only illicitly traded weapons that harm civilians. Licit transfers are also of concern when the weapons are used to commit violations against civilians. I would urge Member States participating in the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty to ensure that respect for international humanitarian law and human rights law is among the criteria for making arms transfer decisions.

B. Encouraging developments

19. Sobering though the reality is, there are encouraging developments to report, though largely at the normative level.

Advances at the normative level

20. Resolution 1894 (2009) includes important provisions that respond to some of the five core challenges, including in relation to promoting compliance with the law, the role of peacekeeping and other missions in protection, and enhancing humanitarian access and accountability. These are discussed further below.

21. Resolution 1888 (2009) led to the appointment in February 2010 of my Special Representative on Sexual Violence in Conflict. I am confident that the work of the Special Representative will lead to a more coherent and consistent approach to preventing and responding to sexual violence, as well as to more systematic reporting. I call on parties to conflict and other Member States to fully support her work. In resolution 1888 (2009), the Security Council also called for the establishment of an innovative mechanism — the team of experts — which is mandated, inter alia, to work with national legal and judicial officials to address impunity, including by strengthening national capacity.

22. The Council's adoption of resolution 1882 (2009) further enhances child protection by expanding the listing of parties in the annexes of my annual report to the General Assembly and the Security Council on children and armed conflict to include those who kill and maim children or commit rape and other forms of sexual violence against children. Importantly, in that resolution, the Council also reaffirmed its intention to take action against persistent perpetrators, including by enhancing communications between the Working Group on Children and Armed Conflict and the sanctions committees.

23. Encouraging developments are also evident in the way and extent to which protection is addressed in Security Council resolutions. For example, there has been more frequent reference to the obligations of parties under international humanitarian and human rights law. In situation-specific resolutions, the Council has increasingly called for protection to be prioritized in the implementation of peacekeeping mandates. Missions have been requested to develop protection

strategies. There has also been greater specificity in the protection concerns to be addressed, including detention, the use of human shields and particular types of weapons, and the need to consider all forms of durable solutions for internally displaced persons and refugees.

24. Along with the aide-memoire, the Security Council's informal Expert Group on the Protection of Civilians has contributed to this process and is proving a useful vehicle through which to inform the Council's deliberations on particular situations from a protection perspective. Since its establishment in January 2009, the Expert Group has met 17 times and considered Afghanistan, the Central African Republic, Chad, Côte d'Ivoire, the Democratic Republic of the Congo, Iraq, Somalia and the Sudan.

25. Given the magnitude of the displacement crisis in Africa, I welcome the adoption in October 2009 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. I would urge States members of the African Union to sign and ratify the Convention without delay so as to enable its rapid entry into force. States affected by displacement are also encouraged, with the support of relevant United Nations actors, to establish domestic normative frameworks to prevent and respond to this grave problem.

26. I would also urge those States that have yet to do so to ratify the Convention on Cluster Munitions, which entered into force on 1 August 2010. Given the fundamental importance of the choice of weapons in minimizing the effect of hostilities on civilians, the Convention constitutes a significant step towards protecting civilians from the insidious effects of such weapons. In a similar vein, I welcome the agreement reached at the 2010 Review Conference of the Rome Statute to amend article 8 of the Statute and extend individual criminal responsibility for the use of poison; poisoned weapons; asphyxiating, poisonous or other gases and all analogous liquids, materials or devices; and bullets that expand or flatten in the body, to non-international armed conflicts, which are, as noted, the predominant form of contemporary conflict.

27. I welcome the entry into force in August 2010 of the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel. While the Convention applies in relation to personnel engaged in peacekeeping operations, the Protocol expands legal protection to all United Nations staff "delivering humanitarian, political or development assistance in peacebuilding" or "delivering emergency humanitarian assistance". I would urge States to sign and ratify the Convention and its Optional Protocol without delay.

28. My previous report referred to concerns relating to the continuing reliance on private military and security companies in a number of conflicts. In that connection, I welcomed the adoption of the Montreux Document (see A/63/467-S/2008/636, annex), the culmination of a process initiated by Switzerland and the International Committee of the Red Cross (ICRC), which seeks to clarify international law as it relates to private military and security companies operating in armed conflicts. Prompted by this initiative, the private security industry, working with a number of States and non-governmental organizations, is developing a code of conduct based on international humanitarian and human rights law. Consideration has been given to oversight of the code by an independent institution with the means to hold to account and sanction those who violate its standards. This would be an important mechanism.

29. In a related development, the Human Rights Council in October 2010 approved the establishment of an open-ended intergovernmental working group to consider the possibility of elaborating a legally binding instrument on the regulation, monitoring and oversight of the impact of the activities of private military and security companies on human rights. I would encourage Member States to participate in the working group to build consensus on a practical legal framework that reinforces existing rules of international humanitarian and human rights law.

30. Over the past year, dialogue on the responsibility to protect has moved away from the more contentious issues and perceptions related to international intervention. My most recent report on the responsibility to protect (A/64/864) focused on early warning and assessment, which Member States seem to be taking up more readily, as reflected in the informal interactive dialogue held by the General Assembly in August 2010. In the meantime, I continue to encourage the institutionalization of the collaboration between my Special Advisers on the prevention of genocide and on the responsibility to protect, including options for a joint office.

Countering impunity

31. Efforts to counter impunity continue to gather pace. July 2010 saw the first conviction by the Extraordinary Chambers in the Courts of Cambodia, of Kaing Guek Eav for crimes against humanity and grave breaches of the 1949 Geneva Conventions. That same month, the International Criminal Court (ICC) issued an indictment for the President of the Sudan on three counts of genocide. This is in addition to the indictment already issued for war crimes and crimes against humanity. In terms of domestic judicial proceedings, for example, there was the conviction by an Israeli military court in October 2010 of two Israeli soldiers for using a Palestinian child as a human shield during Operation Cast Lead in 2009, as well as the ongoing prosecution of a number of military personnel of the United States of America who are accused of involvement in the murder of three Afghan civilians earlier this year. There was also the arrest of individuals by the authorities in Germany in November 2009, and France in October 2010, for allegedly committing war crimes and crimes against humanity in Rwanda and the Democratic Republic of the Congo, respectively. October 2010 also saw the arrest by the national authorities of the leader of an armed group allegedly involved in the aforementioned rapes in Kibua in the Democratic Republic of the Congo. Welcome though they are, as discussed in greater detail below, such arrests and prosecutions remain simply too few in the face of existing and mounting allegations of serious violations of humanitarian law and human rights in these and other contexts.

Policy development

32. At the policy level, the United Kingdom of Great Britain and Northern Ireland and Switzerland have adopted strategies on the protection of civilians. These address such issues as strengthening the normative framework, the operational response and building national capacity. I would encourage other Member States to also reflect on their role in supporting the protection of civilians and to develop similar policies. The Secretariat stands ready to support such efforts.

Strengthening protection on the ground

33. Of particular note, there has been progress in strengthening protection on the ground. Special mention should be made of the specific mandate entrusted by the international community to the ICRC in the protection of civilians. In addition to ICRC, an increasing number of humanitarian organizations now prioritize protection and have either mainstreamed it across their programmes or are implementing specific protection projects. The implementation of the cluster approach by United Nations and other humanitarian organizations and the establishment of field-based protection clusters, as well as the development of new protection tools, guidance and standards, are ensuring a more coordinated and professional response to protection concerns. Nevertheless, the need for more comprehensive and consistent action remains.

34. Important measures are being introduced to improve the implementation of protection mandates by peacekeeping and other relevant missions, based largely on the recommendations of the November 2009 independent study *Protecting Civilians in the Context of United Nations Peacekeeping Operations*, which was jointly commissioned by the Office for the Coordination of Humanitarian Affairs and the Department of Peacekeeping Operations. Several of these recommendations were reflected in resolution 1894 (2009) and have led to particular initiatives (which are discussed further below), including the development by the Department of Peacekeeping Operations and the Department of Field Support of an operational concept regarding the protection of civilians in United Nations peacekeeping operations. Similar initiatives are being undertaken at the regional level. The African Union is finalizing guidelines on the protection of civilians for its peace operations, while the European Union is revising its guidelines on the protection of civilians in European Union-led crisis management operations. I would encourage further coordination between regional and international organizations on these complementary initiatives.

35. Understanding of the different approaches to applying protection on the ground is increasing. In resolution 1894 (2009), the Security Council noted the practical measures taken by peacekeeping missions and United Nations country teams to protect civilians, and requested the inclusion of "best practice" in the present report. The Department of Peacekeeping Operations and the Global Protection Cluster are collecting lessons learned and good practice in protection. Their findings to date underline the critical role of humanitarian workers, peacekeepers and other actors in enhancing protection on the ground. Of particular importance, they have identified a number of themes that will usefully inform future protection efforts.

36. First, they have confirmed that effective protection requires a presence among civilian populations and, in particular, those at risk. This has long been recognized by humanitarian actors and has increasingly been employed by peacekeeping missions through standing military and police patrols and other force deployments, such as mobile operating bases, which increase the reach of a limited number of troops and enhance their deterrence and response capacity for protecting civilians.

37. Second, regular assessments of potential threats to civilians, including through constant interaction with the populations concerned, and the establishment of early warning systems are critical to ensuring timely action. A number of peacekeeping missions and humanitarian actors have established assessment and warning

mechanisms that allow them to respond to potential threats early and with preventive measures. In Timor-Leste, for example, telephone hotlines have been established for civilians and local authorities to contact the United Nations Integrated Mission in Timor-Leste.

38. Third, coordinated action on geographical and operational priorities among all relevant protection actors is essential, in accordance with their mandates. The routine establishment of dedicated protection clusters or working groups at the national level and, in many cases, at the local level has significantly contributed to the ability of humanitarian actors to respond in a coordinated manner to ongoing or anticipated protection concerns. Responses have included ensuring a humanitarian presence in areas of concern, advocating with the local and national authorities and working closely with and calling on the more robust support of peacekeeping missions. Consideration has been given in some settings to developing joint protection strategies and implementation mechanisms. For example, in the Sudan, a network of 15 inter-agency protection working groups was established countrywide under the lead of the protection of civilians unit of UNMIS. They undertook field assessments, follow-up on individual cases and returnee monitoring.

39. Within peacekeeping missions, the protection of civilians is greatly enhanced when all components (military, police and civilian) are engaged, rather than this task being relegated to only the military component. Some protection initiatives, such as the joint protection teams, which have been widely used in the Democratic Republic of the Congo, have been based on this approach. Composed of staff from civil affairs, human rights, gender, political affairs, child protection and public information sections, the teams are deployed on a temporary basis to military outposts to gather information and provide analytical support to help design context-specific action plans to protect civilians.

40. Fourth, the efforts of the civilian population to protect itself must be supported. Communities facing violence often have well-established early-warning mechanisms that allow them to move to safer areas before they are attacked. In several contexts, women have employed different strategies to avoid sexual violence when collecting firewood and undertaking other daily tasks. Approaches to protection that involve the participation of affected communities and that build on the capacities of those communities should be adopted, while State authorities who retain the primary responsibility for protection should be engaged. In the Sudan, for example, United Nations police, the United Nations Development Programme and the local authorities have empowered internally displaced persons to work with the national police in crime prevention and the maintenance of law and order in camps.

41. Fifth, the allocation of sufficient resources for discrete protection activities and initiatives is key, and expands the capability of humanitarian organizations and peacekeeping missions to protect civilians. For example, UNAMID police and formed police units installed lights and cameras around the perimeter of camps for displaced persons in order to deter attacks and record information on those intent on harming civilians.

42. Last but not least, and underpinning all such efforts, is the need for the proactive engagement of senior United Nations officials on the ground, including my Special Representatives and Humanitarian Coordinators, with the parties to conflict, with a view to advocating on behalf of those at risk and preventing threats to civilians from further escalating.

III. The five core challenges

43. Such developments notwithstanding, still more needs to be done to meet the five core challenges to ensuring more effective protection for civilians, as identified in my previous report, namely enhancing compliance by parties to conflict with international law, enhancing compliance by non-State armed groups, enhancing protection by United Nations peacekeeping and other relevant missions, enhancing humanitarian access and enhancing accountability for violations of the law.

A. Enhancing compliance

44. Constant care must be taken by parties to conflict to spare the civilian population from the effects of hostilities. Failure to do so may result in the death and injury of civilians targeted or otherwise caught in attacks. It is also frequently the precursor to displacement and an increased risk of other violations, including sexual violence and forced recruitment; physical and mental suffering; and a potentially chronic dependency on humanitarian assistance.

45. Sparing civilians from the effects of hostilities requires, inter alia, strict compliance by parties to conflict with international humanitarian law and, in particular, with the principles of distinction and proportionality. It also requires that parties take all feasible precautions in attack and defence. The law is also clear that under no circumstances do violations of these rules by one party to a conflict justify violations by its opponent, yet, as can be seen in such contexts as those mentioned above, violations continue to be commonplace, with often devastating consequences for civilians.

46. The Security Council has repeatedly condemned the deliberate targeting of civilians; however, in resolution 1894 (2009), the Council took its concerns further. It condemned as flagrant violations of international humanitarian law attacks directed against civilians and protected objects, as well as indiscriminate or disproportionate attacks and the utilization of the presence of civilians to render certain points, areas or military forces immune to military operations, and demanded that all parties immediately end such practices. This broadening and increased precision in the scope of the Council's concern is welcome and, indeed, reflective of the law.

47. In resolution 1894 (2009), the Security Council further referred to its willingness to respond to situations of conflict in which civilians were targeted or humanitarian assistance was deliberately obstructed, including through the consideration of appropriate measures at its disposal. In my previous report, I recommended various steps the Council could take to promote systematic compliance with international law, such as the application of targeted measures against parties that consistently defied the Council's demands and routinely violated their legal obligations to respect civilians. These recommendations still stand, and it is hoped that resolution 1894 (2009) indicates an increased willingness on the part of the Council to take such action.

48. In my previous report, I noted my increasing concern at the humanitarian impact of explosive weapons, particularly when used in densely populated areas. Explosive weapons include artillery shells, missile and rocket warheads, various kinds of bombs, cluster munitions, landmines, grenades and improvised explosive

devices. A common feature of explosive weapons is that they are indiscriminate within their zones of blast and fragmentation effect, which makes their use highly problematic in populated areas.

49. Data collected by various organizations concerning a range of conflicts, including Afghanistan, Iraq, Somalia and Yemen, reveals substantial and ongoing civilian suffering caused by explosive weapons when they are used in populated areas. Civilians within the vicinity of an explosion are likely to be killed or injured by the blast and fragmentation effects of such weapons. They may be harmed by the collapse of buildings or suffer as a result of damage to infrastructure that is vital to the well-being of the civilian population, such as hospitals and sanitation systems. The use of explosive weapons also creates unexploded ordnance that persists as a threat to civilians until it is removed.

Recommendations

50. **I would urge Member States, United Nations actors and international and non-governmental organizations to consider the issue of explosive weapons closely, including by supporting more systematic data collection and analysis of the human costs of their use. This is essential to deepening the understanding of the humanitarian impact of such weapons and to informing the development of policy and practice that would strengthen the implementation of international humanitarian and human rights law. The annual report on the protection of civilians in armed conflict produced by UNAMA provides a good overview of the nature of attacks involving civilian casualties. It is an example of good practice in this area that I would encourage other United Nations missions and actors to adapt to their specific circumstances.**

51. **I would also urge increased cooperation by Member States, both in terms of collecting and making available to the United Nations and other relevant actors information on civilian harm resulting from the use of explosive weapons and in terms of issuing policy statements that outline the conditions under which explosive weapons might be used in populated areas.**

B. Enhancing compliance by non-State armed groups

52. Improved compliance with international humanitarian law and human rights law will always remain a distant prospect in the absence of, and absent acceptance of the need for, systematic and consistent engagement with non-State armed groups. Whether engagement is sought with armed groups in Afghanistan, Colombia, the Democratic Republic of the Congo, the occupied Palestinian territories, Pakistan, Somalia, the Sudan, Uganda, Yemen or elsewhere, experience shows that lives can be saved by engaging armed groups in order to seek compliance with international humanitarian law in their combat operations and general conduct, gain safe access for humanitarian purposes and dissuade them from using certain types of weapons.

53. Indeed, while armed groups are diverse in their motivations and conduct, there are those which have shown a readiness to establish and implement commitments in conformity with their obligations under international humanitarian law and with human rights law. Some non-State armed groups have been receptive to training on these topics. Some have adopted codes of conduct, unilateral declarations and special agreements, as envisaged under international humanitarian law, through

which they commit to comply with their obligations or even undertake commitments that go beyond those required by the law. Some groups have agreed to and implemented action plans, pursuant to Security Council resolution 1612 (2005), to bring their conduct into line with international norms regarding children in armed conflict and, in particular, to release children in their ranks. Forty-one armed groups have signed the Geneva Call Deed of Commitment, resulting in the destruction of approximately 20,000 stockpiled anti-personnel mines and thousands of improvised explosive devices and abandoned ordnance.

54. Recent research has identified a number of incentives for non-State armed groups to comply with international norms to protect civilians.[1] The primary incentive for compliance appears to be the group's own self-interest, which has military, political, and legal aspects. With respect to the military arguments for compliance, respect for norms by one party to a conflict typically encourages respect for norms by the other party or parties. Conversely, although not justified by the law, abuses and violations committed by one party are normally met with a similar response from the other party or parties. The political arguments for compliance centre on the desire of many non-State armed groups and/or the causes they espouse to be recognized as "legitimate". The legal arguments for compliance centre primarily on the avoidance of international criminal sanction, which is best achieved through the effective command and control by an armed group of its members. In addition, there are important humanitarian arguments for compliance that relate to the desire of certain non-State armed groups to respect human dignity. This desire should not be underestimated, and may allow for opportunities to go beyond actual international obligations and hold such groups to standards that provide a higher level of protection for civilians than those strictly demanded by international law.

55. Engagement with armed groups for humanitarian ends is clearly possible and, indeed, necessary in order to negotiate safe humanitarian access to those in need. I am encouraged that the ongoing discussions on this issue during the Security Council's biannual open debates on the protection of civilians reveals an increasing appreciation by Member States of the importance of engagement for humanitarian purposes. This is yet to translate, however, into broad acceptance of such engagement or, moreover, into a willingness to refrain from adopting measures that impede or, in some cases, criminalize engagement with non-State armed groups. For example, in Somalia concerns exist that some donor States, particularly those that have designated Al-Shabaab as a terrorist organization, have introduced conditions into their funding agreements with humanitarian organizations that impose limits on operations in Al-Shabaab-controlled areas. In Gaza, the humanitarian funding policies of some donor States have sought to limit contact with Hamas by the humanitarian organizations they fund, even though Hamas exercises effective control over Gaza and is thus a key interlocutor in ensuring that aid reaches those who need it. Humanitarian agencies also voiced concerns over the possible humanitarian impact of domestic legislation, such as that in the United States, which criminalizes various forms of material support to prohibited groups.

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[1] Geneva Academy of International Humanitarian Law and Human Rights, "Armed non-State actors and international norms: towards a better protection of civilians in armed conflicts". Available from www.adh-geneve.ch/pdfs/armednonstateactors.pdf.

Recommendations

56. **I would again stress the need for a comprehensive approach towards improving compliance with the law by non-State armed groups. Such an approach would involve an increased understanding of the motivations of specific groups and their incentives to comply with international law, and the development of strategies for engaging such groups, with a view to seeking improved protection for civilians, including safe and secure humanitarian access to those in need.**

57. **More immediately, I would urge Member States to consider the potential humanitarian consequences of their legal and policy initiatives and to avoid introducing measures that have the effect of inhibiting humanitarian actors in their efforts to engage armed groups for the humanitarian purposes referred to above.**

C. Protection of civilians by United Nations peacekeeping and other operations

58. From Chad to Côte d'Ivoire, the Democratic Republic of the Congo to Liberia, and Sierra Leone to the Sudan, United Nations peacekeeping missions have had a significant impact on enhancing the protection of civilian populations. As noted in my previous report, however, the implementation of mandates to protect civilians has had its challenges.

59. Improvements are being sought. These include the development of a Department of Peacekeeping Operations-Department of Field Support operational concept for the protection of civilians in United Nations peacekeeping operations and the development of a framework to guide the preparation by missions of strategies to protect civilians, which were expressly requested by the Security Council in resolution 1894 (2009). As the framework covers only the development of protection strategies, further operational guidance will be required on other aspects of the implementation of protection mandates by peacekeeping missions. To date, strategies for protecting civilians have been developed by United Nations missions in Côte d'Ivoire, the Democratic Republic of the Congo and the Sudan, and are currently being developed in Lebanon. I urge other relevant missions to start the process.

60. In resolution 1894 (2009), the Security Council also requested the inclusion of more comprehensive and detailed information on the protection of civilians in armed conflict in my reports on country-specific situations, and the development of guidance to that end. Such information is vital in order for the Council to take effective action against the perpetrators of violations, provide peacekeeping missions with realistic and achievable mandates and monitor the implementation of those mandates. Guidance is currently being developed by the Secretariat.

61. In resolution 1894 (2009), the Security Council requested that peacekeeping missions with protection of civilian mandates conduct predeployment training and senior leadership training on the protection of civilians. The Council further requested troop- and police-contributing countries to ensure appropriate training of their personnel participating in peacekeeping missions in order to heighten awareness and responsiveness to protection concerns. The Special Committee on

Peacekeeping Operations has requested the Department of Peacekeeping Operations to develop training modules for all peacekeeping personnel that cover mandated tasks, including the protection of civilians. The Department of Peacekeeping Operations has begun to make progress on this, and the modules are due for completion in early 2011. In partnership with the United Nations Entity for Gender Equality and the Empowerment of Women and United Nations Action against Sexual Violence in Conflict, the Department of Peacekeeping Operations is also developing scenario-based training materials for military peacekeepers on sexual violence.

62. A recurring concern is the need to provide missions with the necessary resources to implement protection mandates. This is crucial in order to fulfil the expectations of the Security Council, which sets the mandates, and, more importantly, the civilian populations that missions are mandated to protect. In resolution 1894 (2009), the Council itself stressed that mandated protection activities must be given priority in decisions about the use of available capacity and resources but also reaffirmed the importance of greater awareness among its members of the resource and field-support implications of its decisions. At the request of the Special Committee on Peacekeeping Operations, the Department of Peacekeeping Operations and the Department of Field Support are outlining resource and capability requirements for the implementation of mandates to protect civilians, which will help raise awareness. In this connection, I am concerned at the recent and anticipated further withdrawal of helicopters from the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and UNMIS, as well as the existing gaps in UNAMID, and the negative repercussions this has on force projection, a crucial component of the protection response of those missions.

63. Implementing a protection mandate is challenging enough, but it is even more so when the armed and security forces of the host State, which often receives technical and other support from the United Nations mission, are implicated in the perpetration of human rights and international humanitarian law violations. In 2009, the then United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was severely criticized for its support to elements of FARDC who were accused of serious violations of international humanitarian law during military operations against the Forces démocratiques de libération du Rwanda.

64. On my instruction, the Mission elaborated and implemented a conditionality policy according to which it would not support military operations by FARDC units if there were grounds to believe that such units would violate international humanitarian and human rights law in the course of the operation. The Mission would also participate in or support only those FARDC operations that were jointly planned with the Mission. It would, moreover, immediately intercede with the FARDC command if elements of a unit receiving support from the Mission were believed to be committing grave violations, and suspend support if FARDC took no action or if violations continued. Provisions to that effect were subsequently included in Security Council resolution 1906 (2009).

65. This challenge is not unique to the Democratic Republic of the Congo. The United Nations also provides technical and financial support to the African Union Mission in Somalia, the operations of which have caused alarming numbers of civilian casualties and raised grave concerns as to compliance with international

humanitarian law. In the light of these cases, the Secretariat is undertaking a process aimed at ensuring consistency among missions and agreement on basic principles that must be included in any future case-specific conditionality policies.

66. In resolution 1894 (2009), the Security Council reaffirmed its practice of requiring benchmarks to measure and review progress in the implementation of peacekeeping mandates and stressed the importance of including indicators regarding the protection of civilians. Benchmarks are critical to measuring progress and demonstrating that the protection of civilians not only is an aspirational policy statement at the normative level but also can and does have practical meaning on the ground. Benchmarks also serve to engage members of the Security Council, in a more focused and sustained manner, in addressing specific threats and challenges to civilians in conflict areas. They are necessary yardsticks for affected States and communities, as well as international organizations, to measure how much more, how much longer and in what specific areas continued support and efforts are needed.

67. The need to measure progress against benchmarks is particularly acute in the context of mission drawdown, which is an issue of increased concern. In recent months, some United Nations peacekeepers have begun to withdraw from the Democratic Republic of the Congo, while the United Nations Mission in the Central African Republic and Chad (MINURCAT) is expected to withdraw completely by the end of 2010. The protection and humanitarian implications of drawdown vary depending on the local context; however, to reduce the possible risk of increased levels of instability, violence and protection concerns, including diminished physical protection, it is essential that drawdown be based not on arbitrarily imposed timelines but rather on the achievement of clear benchmarks, including in relation to the protection of civilians.

68. In this light, I am encouraged by Security Council resolution 1923 (2010) concerning the drawdown of MINURCAT. Its articulation of specific protection tasks and benchmarks that Chad has committed to implement and meet is critically important. These include ensuring the security and protection of civilians in danger and the voluntary, safe return or resettlement of internally displaced persons. Importantly, the resolution provides for a joint Government of Chad-United Nations high-level working group to regularly assess the protection situation and the measures adopted by the Government to implement the various tasks. Resolution 1923 (2010) provides a useful example of the benchmarks and requirements the Council could insist upon for ensuring that drawdown is undertaken with full cognizance of its impact on the protection of civilians. Effective monitoring and reporting by the high-level working group on the implementation of these provisions will be crucial, in order to both keep the Council informed of progress and to highlight to donor States areas that will need additional support.

69. Indeed, drawdown is of concern also in terms of the severe resource implications for the humanitarian and development actors that remain once a mission has withdrawn. These actors may have previously relied on the mission for security, logistical and other support derived from assessed rather than voluntary contributions. Once missions withdraw from contexts that still pose security and logistical challenges, humanitarian and development actors will require additional capacity and resources to ensure their security and continued operation. The same reasoning applies to other areas that were formally supported by the mission and

financed from assessed contributions, such as rule of law, human rights and child protection activities. I will include information on the possible operational and financial implications of mission drawdown in my reports to the Security Council. Member States must be fully aware of the potential consequences of withdrawal and, in particular, the need for increased voluntary contributions to support crucial ongoing humanitarian and development activities, especially those related to protection.

Recommendations

70. **Pursuant to resolution 1894 (2009), peacekeeping and other relevant operations should develop specific benchmarks against which to measure and review progress in the implementation of mandates to protect civilians.**

71. **In advance of the drawdown of United Nations peacekeeping and other relevant operations, the Security Council, or Member States more generally, should urge the articulation of benchmarks relating to the protection of civilians. The Council should also urge the establishment of an appropriate mechanism to measure and report on progress against such benchmarks.**

72. **In the context of drawdown, donor States are encouraged to anticipate and respond in a timely manner to increased funding requirements for the humanitarian and development actors that remain.**

D. Humanitarian access

73. Access is the fundamental prerequisite to humanitarian action, yet, as demonstrated in the annex to the present report, access is all too frequently compromised. Bureaucratic constraints, active hostilities, deliberate attacks against humanitarian workers, the economically motivated theft of humanitarian supplies and equipment, or a combination of all of the above continue to undermine efforts to protect and assist those in need.

74. In resolution 1894 (2009), the Security Council noted with grave concern the severity and prevalence of constraints on humanitarian access, the frequency and gravity of attacks against humanitarian personnel and the implications of such attacks for humanitarian operations. The Council further stressed the importance of parties to armed conflict cooperating with humanitarian personnel in order to allow and facilitate access to conflict-affected populations.

75. Importantly, in that resolution the Security Council reaffirmed its role in promoting an environment that is conducive to facilitating humanitarian access. To that end, the Council expressed its intention to call on parties to armed conflict to comply with their obligations under international humanitarian law to facilitate the rapid and unimpeded passage of relief consignments, equipment and personnel and to respect and protect humanitarian personnel. The Council further expressed its intention to consistently condemn and call for the immediate cessation of all acts of violence and other forms of intimidation deliberately directed against humanitarian personnel, and to take appropriate steps in response to deliberate attacks against humanitarian personnel.

76. The continued attention of the Security Council to access constraints is welcome, although this issue still requires a more comprehensive and consistent

approach. The Council has continued to express concern about restrictions on humanitarian access in several situations and has called on all parties to provide rapid and unimpeded access to all persons in need of assistance. Nevertheless, greater precision is needed in specifying the nature of such restrictions and, moreover, actions to be taken to counter them, such as expediting customs examination and clearance procedures and waiving or streamlining processes for travel permits. The Council has also repeatedly condemned attacks against humanitarian workers in Afghanistan, Darfur, the Democratic Republic of the Congo, Somalia and elsewhere. In very few cases, however, has the Council called for accountability for those responsible for such attacks.

77. In addition to a more comprehensive and consistent approach, several of the possible Council actions identified in my previous report remain relevant. These include calling on parties to conflict to allow safe passage for civilians seeking to flee zones of fighting and to agree on measures to enable relief actions during active fighting, such as a temporary suspension of hostilities, days of tranquillity and "de-confliction" arrangements.[2]

78. The Security Council could also support efforts to address the particular problem of increased criminality in armed conflict by encouraging United Nations peacekeeping and other missions to identify and analyse factors contributing to such criminality and actions that could mitigate the impact of those factors on humanitarian access. This would be in line with the Council's role, as stated in resolution 1894 (2009), in promoting an environment conducive to the facilitation of humanitarian access, and would make a valuable contribution to maintaining safe access by addressing a problem that increasingly threatens humanitarian operations in Chad, Darfur, the Democratic Republic of the Congo and elsewhere. Such analysis would also contribute to the work of missions, as the factors that lie behind increased criminality have implications for disarmament, demobilization, reintegration and rehabilitation; security sector reform; and the rule of law.

Recommendations

79. **The Security Council is urged to take a more consistent and comprehensive approach to addressing access constraints, in particular in implementing the provisions of resolution 1894 (2009).**

80. **The Security Council is also urged to ensure enhanced accountability for grave instances of deliberate delays or denials of access for humanitarian operations, as well as situations involving attacks against humanitarian workers, including through referrals to ICC or encouraging domestic prosecutions.**

81. **In this connection, and in line with resolution 1894 (2009), the Security Council should request the Emergency Relief Coordinator to systematically bring to its attention situations in which humanitarian operations are deliberately obstructed and to suggest possible response actions for consideration by the Council.**

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[2] De-confliction arrangements involve coordinating the time and location of relief activities and movements by humanitarian organizations through liaison between those organizations and the parties to conflict during hostilities.

E. Enhancing accountability

82. Fundamental to enhancing compliance is the need to enhance accountability for violations of international humanitarian and human rights law, both for parties to conflict and individual perpetrators. As noted in my previous report, in many conflicts it is to a large degree the absence of accountability, and, worse still, the lack in many instances of any expectation thereof, that allow violations to thrive.

83. My previous report outlined several recommendations to enhance accountability. These still stand, and some were reiterated by the Security Council in resolution 1894 (2009). Specifically, in that resolution, the Council called upon all parties concerned to disseminate information about, and provide training to combatants on, international humanitarian, human rights and refugee law and to ensure that orders and instructions issued to combatants complied with international law and were observed, including by establishing effective disciplinary procedures. The Council emphasized, moreover, the responsibility of States to comply with their obligations to investigate and prosecute persons suspected of war crimes, crimes against humanity, genocide or other serious violations of international humanitarian law.

84. The emphasis on the responsibility of States to investigate and prosecute such crimes is warranted, and, as noted above in section II.B, there have been further positive, if incremental, steps at the national level. These are critically important developments, not least in terms of raising the expectation of accountability among belligerents; however, they remain simply too few in the face of existing and mounting allegations of serious violations of humanitarian and human rights law in today's conflicts.

85. As evidenced in the biannual Security Council open debates on the protection of civilians, Member States ascribe considerable importance to the principle of complementarity, and several of them have stressed that international efforts to enhance accountability should support, rather than supplant, national efforts. This is fundamental but will often require financial and technical support. Particular attention should be given in this regard to measures that enhance access to justice for victims, which is frequently problematic, not least in relation to sexual violence cases.

86. I note also that, in resolution 1894 (2009), the Security Council emphasized the need to enhance international cooperation in support of national mechanisms, and drew attention to the full range of justice and reconciliation mechanisms to be considered, including national, international and "mixed" criminal courts and tribunals. The War Crimes Chamber of the Court of Bosnia and Herzegovina, the Extraordinary Chambers in the Courts of Cambodia and the Special Court for Sierra Leone are all important models of mechanisms to support much-needed national-level investigations and prosecutions.

87. At the same time, it is imperative that international steps to ensure accountability not be held hostage to unnecessarily slow or otherwise ineffective national efforts. In this regard, an important, if at times politically sensitive, first step towards ensuring accountability is the mandating of commissions of inquiry. Action of this sort sends an important signal that violations will be pursued and that victims will not be ignored, and can pave the way for formal national or international judicial proceedings. In resolution 1894 (2009), the Security Council

emphasized the importance of addressing compliance by parties to armed conflict with international law and noted the methods used for gathering information on alleged violations. It further underlined the importance of timely, objective, reliable and accurate information and considered the possibility, to that end, of using the International Humanitarian Fact-Finding Commission established by article 90 of the First Additional Protocol to the Geneva Conventions.

88. The International Humanitarian Fact-Finding Commission is one option at the disposal of the Security Council. The Council has in the past also requested the establishment of ad hoc commissions in relation to the former Yugoslavia, Rwanda and Darfur, pursuant to resolutions 780 (1992), 935 (1994) and 1564 (2004), respectively. The findings and recommendations of these commissions contributed to the establishment of the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, as well as the decision of the Council to refer the situation in Darfur to ICC.

89. It is not only the Security Council that can take initiatives in this area. The Human Rights Council has mandated a number of fact-finding commissions, with secretariat support provided by the Office of the United Nations High Commissioner for Human Rights, including the United Nations Fact-Finding Commission on the Gaza Conflict, established in April 2009. The report of the Fact-Finding Commission, issued in September 2009, found that serious violations of international humanitarian law and human rights law had been committed by Israeli armed forces and Palestinian armed groups. The Human Rights Council has instituted a system of reporting to monitor progress in implementing the Commission's recommendations, as well as a committee of independent experts to monitor and assess any domestic, legal or other proceedings undertaken by Israel and the Palestinian side.

90. Establishing commissions of inquiry and similar mechanisms can be politically sensitive, yet they clearly have utility in ascertaining the facts and recommending follow-up action with a view to ensuring accountability for violations. I intend to request Secretariat departments directly involved in launching and supporting inquiries to undertake a review of the United Nations experience in these processes, in consultation with other relevant departments, with a view to identifying how such processes might be used on a more consistent and less politically influenced basis. Scrutiny must be the norm.

91. In the case of Sri Lanka, instead of establishing a fact-finding or accountability mechanism, I appointed in June 2010, as follow-up to my May 2009 joint statement with President Rajapaksa, a panel of experts to advise me on Sri Lanka's efforts to address violations of international humanitarian and human rights law that may have occurred during the conflict.

92. As mentioned in my previous report, victims have a right to reparations for violations of human rights law and international humanitarian law. Reparations can play an important deterrent, as well as restorative, role.

93. In this connection, I note the emerging practice of several States, one that other parties to armed conflict might consider, of acknowledging the harm they cause to civilians and compensating victims. The practice of making amends may range from public apologies to financial payments and livelihood assistance provided to individuals, families and communities. This practice must not be seen,

however, as an alternative to prosecuting those responsible for violations of international humanitarian and human rights law and delivering justice to the victims and their families and communities.

94. In Afghanistan, for example, this practice has been implemented by most States participating in ISAF through apologies and different monetary schemes; however, the States participating in ISAF have widely varying policies and practices, and military commanders have significant discretion to investigate and execute existing policies. The North Atlantic Treaty Organization adopted a set of non-binding guidelines in June 2010 to streamline the process for addressing harm to civilians and to ensure fairness, predictability and sensitivity to victims. I would encourage ISAF to ensure that information on the process for making claims is disseminated among the population and that such claims are decided in a timely manner.

Recommendations

95. **Member States are encouraged to provide financial and technical assistance to support more effective national efforts to investigate and prosecute serious violations of international humanitarian and human rights law.**

96. **Member States are encouraged to consider the possibility of "mixed" criminal courts and tribunals when national mechanisms are unable to cope with the existing or potential caseload.**

97. **Member States that have yet to do so are encouraged to sign and ratify the Rome Statute of ICC.**

98. **The Security Council should:**

(a) **Systematically include in relevant situation-specific resolutions provisions relating to:**

(i) **The need to disseminate information about, and provide training for combatants on, international humanitarian, human rights and refugee law, and to establish effective disciplinary procedures to ensure that orders and instructions issued to combatants are observed;**

(ii) **The need for States to take appropriate steps to comply with their obligations to investigate and prosecute persons suspected of war crimes, crimes against humanity, genocide or other serious violations of human rights law;**

(b) **Insist that Member States cooperate fully with ICC and similar mechanisms. This includes, for States parties to the Rome Statute, apprehending persons indicted by ICC who are on their territory;**

(c) **Enforce such cooperation, as necessary, through targeted measures;**

(d) **Systematically request reports on violations and consider mandating commissions of inquiry to examine situations in which concerns exist about serious violations of international humanitarian and human rights law, including with a view to identifying those responsible and their being held accountable at the national level or subjected to targeted measures and/or the situation being referred to ICC;**

(e) **Call upon States to establish, or mandate, mechanisms to receive claims from individuals alleging to be the victims of violations of international humanitarian law and human rights law.**

IV. Conclusions and actions

99. The present report began with a clear and simple message: that we must focus our efforts on enhancing protection where and for whom it matters most — on the ground, in the midst of conflict and for the hundreds of thousands of civilians who are, on a daily basis, at risk of, or fall victim to, serious violations of international humanitarian law and human rights law.

100. In both the present report and in my previous report, I have outlined pertinent recommendations intended to meet the five core challenges and, above all, facilitate protection on the ground. I would strongly urge the Security Council and Member States to consider these recommendations and implement them accordingly.

101. In addition, I would urge members of the Security Council and other Member States to consider three actions that are implicit in the present report and absolutely fundamental to enhancing collective efforts to enhance the protection of civilians. The first two apply specifically to the Council, while the third concerns the role of United Nations humanitarian and peacekeeping operations.

Action one
Ensuring a comprehensive approach

102. It is imperative that we move away from the current selective approach to the protection of civilians in armed conflict. In resolution 1894 (2009), the Security Council reiterated its willingness to respond to situations of armed conflict where civilians were being targeted or humanitarian assistance was being deliberately obstructed, including through the consideration of appropriate measures at its disposal. It would also be important for the Council to consider extending this willingness to act to conflicts of which it is not already seized, as they often raise many of the same, and sometimes more acute, protection concerns that are seen in those situations that are already on the Council's agenda. Such conflicts may equally warrant or, by their very nature, demand Council attention, condemnation and action, in line with the thematic resolutions on the protection of civilians and the actions listed in the aide-memoire.

103. **I would urge the Security Council to find new and innovative ways to address those contexts that are not formally on its agenda but in which significant concerns exist in relation to the protection of civilians, including through Arria-formula meetings and expert-level meetings of a less formal character. The Secretariat stands ready to assist in this regard.**

Action two
Ensuring a consistent approach

104. The stated commitment of the Security Council to the protection of civilians as a thematic issue is evident, including through its work in the informal Expert Group on the Protection of Civilians; however, the need for a more comprehensive approach notwithstanding, there must be greater consistency in the manner and

extent to which the Council addresses protection in those contexts of which it is actually seized.

105. **Members of the Security Council are encouraged to systematically apply the aide-memoire, continue to make extensive use of the informal Expert Group on the Protection of Civilians and consider other ways in which the Expert Group could further inform the Council's deliberations, including through specific briefings on thematic protection concerns and on progress made in addressing country-specific protection concerns against benchmarks.**

Action three
Ensuring an accountable approach

106. Systematic monitoring and reporting on the impact of our efforts to improve the protection of civilians is essential. We must track progress, including in terms of the implementation of the Security Council's resolutions; identify areas of concern and appropriate response actions; and ensure an approach in which those involved are accountable for their actions or lack thereof.

107. The Security Council has recognized the need for benchmarks against which peacekeeping missions should report on the implementation of their mandates, including in relation to the protection of civilians. This is fundamental, not least in terms of the drawdown of missions, particularly those that have played an instrumental role in protecting civilians.

108. A broader approach is needed, however. We need to systematically monitor, review and report on the protection of civilians in all relevant situations and, moreover, on the role of all relevant actors in the response, including but not limited to peacekeeping missions, which are merely one protection actor and present only in a limited number of situations. We need to systematically assess and report on the extent to which our actions are making civilians safer.

109. **I intend to ask the Emergency Relief Coordinator to develop, in consultation with relevant United Nations and other actors, indicators for systematic monitoring and reporting on the protection of civilians in armed conflict.**

110. While our efforts to protect civilians on the ground have not kept pace with developments at the normative level, we cannot afford to be dismissive of their impact. As the daily work of countless humanitarian and human rights workers, peacekeepers and political negotiators demonstrates, protection can be done. We need, however, to make it a priority for our actions, operationally and politically, thereby reflecting the very spirit of the United Nations and its Charter. In this respect, our focus, more than 10 years after the Security Council first considered this issue, must shift from describing shortcomings and urging normative change to clearly improving our tools on the ground and monitoring progress — or failure. This is the task that now lies before the Council and, indeed, all of us.

Annex

Constraints on humanitarian access

1. Constraints on humanitarian access in situations of armed conflict take different forms, affecting both access by humanitarian personnel to civilian populations in need and access by civilian populations to assistance and services. Not all constraints are deliberate, and not all constitute violations of international law.

2. My previous report included an annex identifying different types of access constraints. It highlighted three in particular as posing the greatest challenge, owing to their widespread and frequent occurrence and their severe consequences for humanitarian personnel and operations and populations in need: bureaucratic constraints imposed by Governments and other authorities; the intensity of hostilities; and attacks on humanitarian personnel and theft of assets. Eighteen months on, these same constraints continue to seriously affect humanitarian operations and undermine the well-being of civilian populations in conflicts throughout the world.

I. Bureaucratic constraints

3. Bureaucratic restrictions on the entry of personnel, goods and equipment into an affected State, as well as on their movement within the country of operations, can be onerous and time-consuming to comply with and often cause significant delays in the provision of assistance. While, under international humanitarian law, humanitarian activities require the consent, and are subject to the control, of the parties to conflict, those parties are obliged to give such consent to impartial relief operations and must facilitate and allow humanitarian activities to be carried out, including the full, safe and unhindered access by humanitarian personnel to civilian populations in need. Restrictions should not place undue burden on humanitarian operations at the expense of timely access to, and to the detriment of, the affected population.

4. In support of facilitating the timely entry of goods and equipment into affected States, in September 2010 the Office for the Coordination of Humanitarian Affairs and the World Customs Organization signed a memorandum of understanding in which they agreed to cooperate in establishing and promoting measures to expedite the import of relief items and equipment during emergency situations. Drawing on customs-related components of existing conventions, the Office for the Coordination of Humanitarian Affairs and the World Customs Organization have also developed model language concerning, for example, expedited customs examination and clearance procedures. The Security Council can support solutions to ongoing bureaucratic constraints by calling on affected States to refer to the model language for the development of bilateral agreements with humanitarian agencies and to overcome bottlenecks in customs procedures in a timely manner.

5. Meanwhile, bureaucratic constraints continue to restrict access and the delivery of assistance to those in need. In the occupied Palestinian territories, for example, restrictions on the entry of humanitarian goods, imposed as part of Israel's blockade of Gaza since June 2007, continue to impede recovery efforts and

undermine the well-being of the civilian population. Since June 2010, Israel has incrementally relaxed restrictions on commercial goods entering Gaza, and some United Nations recovery projects have been approved by Israeli authorities. Nevertheless, the reconstruction of homes, medical facilities and water and sewerage systems damaged during Operation Cast Lead continues to be impeded by restrictions on the import of construction materials and spare parts intended for humanitarian projects. Time-consuming procedures for monitoring the entry of individual truckloads, as well as existing restrictions on the type and quantity of items that can be brought in and on the movement of humanitarian personnel, continue to impede the implementation of a humanitarian response commensurate with the existing humanitarian need.

6. In Sri Lanka, restrictions on access by United Nations agencies and non-governmental organizations to affected populations across the north were eased in the first half of 2010 in recognition of their expertise and capacity to facilitate post-conflict recovery and reconstruction. Nevertheless, an accumulation of procedures to obtain permission for organizations to operate and carry out certain activities creates a considerable burden for humanitarian actors and greatly reduces the timeliness and efficiency of aid operations. Clearance must be obtained from the Ministry of Defence to access and operate in camps for the displaced, as well as in areas of return. In addition to vehicle checks, the staff of non-governmental organizations may have to undergo body searches prior to entering camps for the displaced. Procedures and paperwork requirements for staff, vehicles and programmes are problematic not only because of their quantity but also because they are not always interpreted consistently by authorities at the local, regional and central levels. New demands or sudden and seemingly arbitrary denials of visas or permission to travel or implement activities result in significant delays and a high degree of unpredictability in humanitarian and recovery/reconstruction programming and implementation. In addition, specific activities, though approved, are restricted by extremely limited timeframes for implementation and geographical coverage. This occurs to such an extent that most humanitarian actors are engaged in an almost constant, time-consuming process of applying for approval to implement activities.

7. In the Sudan, the suspension of humanitarian workers continues, affecting most recently staff of the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees (UNHCR), although the expulsion of UNHCR staff was subsequently reversed. In response to complaints from humanitarian organizations over continuing threats of expulsion, in August 2010 the Government of the Sudan agreed to the establishment of a tripartite mechanism consisting of the Ministries of Foreign Affairs and Humanitarian Affairs and the United Nations Humanitarian Coordinator to review possible expulsions on a case-by-case basis with a view to facilitating their reversal.

8. The high-level committee, established upon the conclusion of the 2007 joint communiqué between the Government of the Sudan and the United Nations and aimed at streamlining bureaucratic procedures affecting humanitarian operations, was expanded and strengthened with the support of the Minister of Humanitarian Affairs following the suspension in March 2009 of the activities of 16 international and national non-governmental organizations. State joint committees and subcommittees on humanitarian programmes and the safety and security of aid workers and property have been established. Overall, although some State-level

meetings have been held, the joint committees in the three Darfur states are still not functional. This greatly reduces the opportunity for dialogue between the authorities and humanitarian actors on humanitarian needs and possible responses thereto.

9. In Yemen, gaining access to a specific location on a specific date requires complex negotiation with multiple actors, and travel is often unpredictable. Prior consultations are required with numerous actors: the central authorities; the local governor; Al-Houthi insurgents; local leaders who may exercise de facto control over an area; and local contacts who can warn of the presence of criminal or otherwise hostile groups. Such conditions underscore the importance of building trust locally at all levels of governmental and non-governmental structures, which in turn requires considerable investment in a long-term presence in situations of protracted conflict.

10. In addition to impeding access by humanitarian actors to those in need, policies instituted by national authorities may lead to segments of the civilian population being unable to access assistance. In Pakistan, registration criteria have sometimes excluded civilians who fled their homes out of fear of impending attack rather than because they were warned by the military to evacuate or because their area was designated as "conflict-affected". This effectively excludes many thousands of people in need from access to food and distributions of tents and non-food items. In Yemen, the Government stopped registering internally displaced persons in July 2010 over concerns that not all persons seeking registration were actually displaced. Although such concerns may be legitimate, they must be addressed in such a way as to ensure that those in genuine need of assistance and services are identified and not excluded from access to them.

11. Humanitarian actors operating in south and central Somalia are continually caught between competing demands by Al-Shabaab and local authorities to pay taxes or conduct their activities in a certain way. In January of this year, the World Food Programme (WFP) temporarily suspended operations across southern Somalia as a result of unacceptable demands by local non-State actors regarding aid delivery. A press statement issued by Al-Shabaab subsequently banned all WFP operations in Somalia. The suspension of operations resulted in approximately 750,000 planned beneficiaries being cut off from food distributions in a country where one in five children in the south and central regions is malnourished.

12. Normally, when faced with such demands, humanitarian actors seek to maintain dialogue, to explain and build acceptance of their humanitarian purpose and to negotiate acceptable terms for continuing their activities. Dialogue with all State and non-State actors for humanitarian ends is not optional but rather is an inevitable necessity in order to reach all civilians in need and ensure the impartial provision of aid. This is true in all conflicts, including Afghanistan, the Central African Republic, the Democratic Republic of the Congo, the occupied Palestinian territories, Pakistan, Somalia, the Sudan and Yemen. As indicated earlier, however, some donor States have introduced conditions into funding agreements, or adopted funding policies or national legislation, that have the effect of imposing limits on, or even criminalizing, contact by humanitarian organizations with non-State armed groups.

13. While the political strategies of some Member States may require policies or legislation aimed at the political or economic isolation of certain groups, such

measures should not result in harm to the civilian population through the effective imposition of restrictions on efforts to care for them and ensure their survival.

II. Ongoing hostilities

14. Ongoing hostilities regularly impede the ability of humanitarian organizations to reach and assist conflict-affected populations in a timely manner in such contexts as Afghanistan, the Central African Republic, Darfur, the Democratic Republic of the Congo, Pakistan, Somalia and Yemen.

15. In the eastern Democratic Republic of the Congo, for example, access is severely constrained owing to ongoing operations by the Forces armées de la République démocratique du Congo (FARDC) and non-State armed groups, including an increase in attacks by the Lord's Resistance Army in Haut and Bas Uélé. This has a significant impact on the distribution of assistance and supplies, including, for example, the timely provision of post-exposure prophylaxis kits to rape victims in order to prevent HIV infection.

16. In Somalia, hostilities during much of 2010 have severely constrained access for international humanitarian actors and had seriously negative consequences for the operations of local humanitarian organizations. The situation is particularly acute in Mogadishu, where fighting has prevented a large proportion of assistance activities, interfered with access to health services and resulted in the periodic localized suspension of wet feeding and supplementary feeding programmes for 266,000 beneficiaries.

17. In Pakistan, humanitarian actors cite ongoing hostilities as the most significant impediment to access. For example, as a result of active hostilities, regular assistance is not currently reaching the displaced or other conflict-affected populations in parts of the Federally Administered Tribal Area, such as the North Waziristan or Kurram agencies.

18. The ability of the civilian population to access assistance and services is as important as access by humanitarian actors to those in need. For example, health workers have reported increases in preventable deaths when people are unable to reach medical facilities in a safe and timely manner because of fighting. Recent fighting between anti-Government elements and the International Security Assistance Force (ISAF) and Afghan forces in Kandahar has inhibited access by the civilian population to health-care centres, including for treatment of conflict-related injuries.

19. In eastern Jebel Marra in Darfur, fighting in early 2010 between rival rebel factions and between rebel and Government forces displaced approximately 100,000 civilians and precipitated the suspension of humanitarian activities in February 2010. The population of Jebel Marra was already vulnerable to food insecurity and disease prior to the suspension of assistance. The absence of timely and necessary assistance has led to fears of possible disease outbreaks, with suspected cases of measles, as well as reports of malnutrition and bloody diarrhoea. Although the intensity of hostilities has declined, the Government has repeatedly denied permission to humanitarian organizations to travel to areas under the control of the Sudan Liberation Army-Abdul Wahid in order to assess the situation and resume humanitarian operations.

20. Such examples underline the importance of implementing measures designed to facilitate access during active hostilities, including the creation of humanitarian corridors or temporary suspensions in hostilities to allow the evacuation of civilians and the passage of relief workers and supplies. Days of tranquillity should continue to be promoted to ensure that vaccination programmes continue during conflict. They may serve as a model to facilitate other humanitarian activities during hostilities. Such measures necessitate engagement by humanitarian actors with all parties to conflict. The Security Council can support these measures by calling on parties to conflict to agree to them and facilitate their implementation. The Office for the Coordination of Humanitarian Affairs is conducting a study on operating in complex security environments, which will identify, in part, good practice with regard to such arrangements. The results of the study may further inform possible Council action.

III. Violence against humanitarian personnel and theft of assets

21. The increase in violence against humanitarian personnel over the past decade is the most severe trend in constraints affecting access. More than 100 humanitarian workers were killed each year in 2008 and 2009, more than three times the number killed a decade ago and twice the number killed in 2005. Those abducted and injured in attacks have numbered more than 200 each year for the past four years. National humanitarian personnel bear the brunt of this risk. In the past year, United Nations personnel have been most affected by insecurity in Afghanistan, Pakistan and Somalia, and continue to face serious challenges in carrying out humanitarian operations in these contexts.

22. So far in 2010, at least 51 humanitarian workers have been killed and 82 abducted.[a] While these figures suggest a downward trend in the overall casualty rate for humanitarian workers in armed conflict, the actual risk to humanitarian personnel has not decreased. Rather, the reduced levels of violence against humanitarian personnel are largely a result of reduced humanitarian presence and ground movements in reaction to increased violence, particularly in Darfur and Somalia. As a result, humanitarian agencies suffer not only continuously high and unacceptable levels of threat to their staff but also vastly reduced levels of access to affected populations.

23. Politically motivated violence against humanitarian personnel and economically motivated criminality are particularly problematic in Afghanistan, the Central African Republic, Chad, the Democratic Republic of the Congo, Somalia, the Sudan and Yemen. In South Sudan, for example, violence against and intimidation of humanitarian personnel have actually increased during the past year. Since February 2010, there have been 99 reports of violence against humanitarian workers involving security forces or harassment by the South Sudan authorities. Thirty-five of these incidents were particularly serious, involving physical abuse, detention without charge or assault on humanitarian premises. Attacks have targeted both national and international staff, and several humanitarian workers have been hospitalized for injuries sustained during attacks by the security forces. Some cases have involved the occupation of schools and clinics or the looting of health and food

[a] See the *Aid Worker Security Database*, available from www.humanitarianoutcomes.org. Figures for 2010 are provisional.

stocks, and have reduced humanitarian services in some sectors to alarmingly low levels. On some occasions, the vehicles of humanitarian organizations have been taken by the security forces to facilitate troop movements.

24. In Darfur, abduction remains a serious concern for the humanitarian community. The incidence of vehicle hijacking has decreased significantly compared with 2009. So far in 2010, 15 vehicles have been hijacked (with 9 of those hijackings occurring during August), compared with 73 in 2009. In Somalia, while there have been numerous serious and fatal attacks on humanitarian workers in 2009 and 2010, the overall number of attacks has decreased significantly this year. In both contexts, however, these downward trends are the result of significantly reduced humanitarian presence and ground movements, which have greatly reduced access.

25. A more significant shift has occurred in Afghanistan. While United Nations security measures continue to limit the movement of United Nations humanitarian actors in areas controlled by non-State armed groups, some non-governmental organizations have sought to adapt their security management measures, establish and maintain dialogue with anti-Government elements and adjust their posture and relationships with other actors so as to convey their neutrality, impartiality and independence. As a result, according to the Afghanistan Non-Governmental Organization Safety Office, attacks on non-governmental organizations involving improvised explosive devices and small arms have each declined by more than 35 per cent over the past year. Conversely, the Safety Office reports a significant increase in attacks on private development contractors that are closely aligned with ISAF- and Government-implemented counter-insurgency activities. While adjustments made by non-governmental organizations in their security management, as described above, have enabled them to maintain programming on the ground, such security is localized and depends on contact with and acceptance by armed groups and community-level leaders in the immediate area. In the meantime, continued threats during travel along roads in areas where there is no clear chain of command among the armed groups that may be present mean a high dependency on costly air travel. This affects the ability of humanitarian actors to assess and address needs in new locations and underscores the importance of more proactive and comprehensive access negotiation with all relevant parties.

26. Given their primary responsibility for ensuring a secure environment for humanitarian operations, States often insist on providing armed escorts to humanitarian organizations in response to ongoing threats. In Pakistan, the national staff of non-governmental organizations continue to remain as vulnerable to violence in 2010 as they were in 2009. Twenty-two employees have been killed, wounded or abducted so far in 2010, compared with 28 in 2009. The Pakistani authorities have sought to address threats to humanitarian operations, including through the provision of armed escorts, for example, in the provinces of Khyber Pakhtunkhwa and Punjab.

27. In situations of armed conflict and where attacks against humanitarian workers are primarily political in nature, however, the use of armed escorts provided by national security forces can undermine the neutrality and independence of humanitarian actors, and the perception thereof, which is essential to establishing their acceptance by all parties to conflict and to minimizing threats against them and the persons they are trying to assist. Accompaniment by State security or armed forces also inhibits the ability of humanitarian actors to engage non-State armed

groups in order to gain safe access to populations in need, particularly when such forces are also parties to conflict.

28. In such situations, armed escorts should be used only as a last resort. The principle of last resort, as it relates to the use of military assets in humanitarian operations, including armed escorts, is widely recognized by States;[b] however, greater understanding of the thinking behind the criteria and conditions of last resort by all parties who seek to facilitate humanitarian access would enable consideration of alternative means for ensuring safe and timely access.

29. In situations where violence against humanitarian personnel and the theft of assets is primarily motivated by economic concerns and perpetrated by criminal groups, armed escorts can have a positive deterrent effect. In the Democratic Republic of the Congo, 152 such incidents have affected humanitarian operations so far this year, including 33 armed incursions into premises and 43 incidents of violence used during the theft of assets, two thirds of which occurred in North Kivu. Non-State armed groups were responsible for 35 of these incidents, 89 were perpetrated by unknown criminal groups and the remaining 28 by FARDC. In Chad, violence against humanitarian organizations and theft are perpetrated primarily by criminal actors for economic gain, and have recently spread to new areas and taken on new forms, including abduction and breaking into premises. Abductions have forced some non-governmental organizations to reduce or suspend activities in border areas with the Sudan.

30. Pursuant to United Nations security measures, United Nations agencies in eastern Chad are required to rely on armed escorts provided by the United Nations Mission in the Central African Republic and Chad (MINURCAT), and agencies in much of the Democratic Republic of the Congo are required to rely on armed escorts provided by the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). This has helped deter economically motivated violence, including vehicle hijackings and the theft of supplies, and has generally contributed to area security. In Chad, however, humanitarian agencies anticipate operational setbacks in the coming months as a result of the withdrawal of MINURCAT forces by the end of 2010, in a context marked by the limited capacity of the national security forces and an expected increase in criminality during the upcoming dry season. Similar concerns exist in relation to the Democratic Republic of the Congo and the drawdown of MONUSCO, which has secured areas where humanitarian activities could then be implemented.

31. The Government of Chad has indicated its intention to provide armed escorts to humanitarian organizations, but it is unclear whether sufficient capacity exists to accommodate humanitarian movements in a timely manner. In addition, whenever operating in a situation of armed conflict, there remain, as noted above, concerns over the risks to the perception, and therefore security, of humanitarian organizations when armed escorts are provided by national security forces rather than United Nations peacekeeping missions, in this case MINURCAT. In both Chad and the Democratic Republic of the Congo, the national security forces, particularly through enhanced policing capacity, should develop alternative approaches to minimize these risks while helping create an environment conducive to

[b] See Inter-Agency Standing Committee, "Guidelines on the use of military and civil defence assets to support United Nations humanitarian activities in complex emergencies" (March 2003).

humanitarian action, such as carrying out patrols along key supply routes and in areas of humanitarian activity rather than providing direct accompaniment.

32. Finally, mention should be made of the continued threat that piracy poses to humanitarian shipments off the east coast of Africa, even though the provision of naval escorts has successfully facilitated safe passage and humanitarian cargo has not been affected in 2010. Nevertheless, the capacity of Somali pirates to attack commercial vessels as far as 897 nautical miles (1,661 km) from the Somali coast is a worrying development and underscores the importance of continued naval escorts.